

March 1, 2004

LINDA MITCHELL  
1107 1<sup>st</sup> AVE #2002  
SEATTLE WA 98101

Subject: Complaint filed against Jean Godden Campaign – PDC Case No. 04-268

Dear Ms. Mitchell:

The Public Disclosure Commission staff has completed its investigation of your complaint received on September 26, 2003, alleging that Jean Godden's website and a campaign flyer falsely claimed the endorsement of Attorney General Christine Gregoire, in violation of RCW 42.17.530.

The PDC staff reviewed your allegations in light of the following statute:

**RCW 42.17.530(1)(c)** prohibits a person from sponsoring with actual malice political advertising that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement. "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity. Any violation must be proven by clear and convincing evidence.

You alleged that the Jean Godden Campaign violated RCW 42.17.530(1)(c) by including in its political advertising an endorsement of Attorney General Christine Gregoire which it did not have. Specifically, you alleged that, in spite of receiving information on September 18 and September 21, 2003 that Attorney General Gregoire did not endorse Ms. Godden's candidacy for Seattle City Council, position 1, on September 23, 2003, the Godden campaign distributed a campaign flyer listing Attorney General Gregoire as an endorser. You also alleged that the Godden campaign continued to list Attorney General Gregoire as an endorser on its campaign website as late as September 24, 2003.

We found that:

- Jean Godden, who was elected to the Seattle City Council in 2003, stated that she included Attorney General Gregoire as an endorser based on a conversation she had with Ms. Gregoire on September 1, 2003 at the King County Labor Council's

Labor Day Picnic at Woodland Park. Ms. Godden stated that during the picnic, Attorney General Gregoire told her that she *“was a supporter and was glad I was running for elected office.”*

- Cathy Allen, Ms. Godden’s campaign consultant, corroborated Ms. Godden’s description of her encounter with Ms. Gregoire at the Labor Day Picnic. Ms. Allen stated that she spoke with Ms. Godden on September 1<sup>st</sup> after the picnic and that Ms. Godden told her Ms. Gregoire had given her a hug and said she was glad she was running. According to Ms. Allen, Ms. Godden asked Attorney General Gregoire if she would support her and was told she would be happy to do so. Given this description, Ms. Allen stated that she too believed that Ms. Godden had received an endorsement.
- On September 17, 2003, you received an e-mail from Attorney General Gregoire stating that she did not endorse anybody in the race. On September 18, 2003, Blair Butterworth contacted Ms. Allen concerning the alleged false endorsement. Ms. Allen then sent an e-mail to Attorney General Gregoire to clarify whether an endorsement had been granted.
- On Sunday, September 21, 2003, Ms. Gregoire wrote to Ms. Allen and to you, confirming that she had not endorsed any candidate. Ms. Allen stated that Ms. Gregoire told her that although she supported Ms. Godden and wished her all the luck in the world, she was not formally endorsing anyone since she was now a candidate for statewide office. In Attorney General Gregoire’s e-mail to you on that same date, she confirmed that the endorsement matter was a good faith misunderstanding.
- On Monday, September 22, 2003, the Godden Campaign reprinted flyers and requested their web master to remove Ms. Gregoire’s name from the web site. However, on September 23<sup>rd</sup>, Tom Von Bronkhorst, the Godden Campaign manager, inadvertently brought some of the uncorrected flyers that contained Ms. Gregoire’s name to the 43<sup>rd</sup> District Democrats’ endorsement meeting. Mr. Von Bronkhorst states that this oversight was brought to his attention, and the campaign corrected the remaining flyers by affixing a sticker over Ms. Gregoire name. According to Mr. Von Bronkhorst, by Thursday, September 25<sup>th</sup>, the campaign had removed Ms. Gregoire’s name from the website and removed her name from all political advertising. There is no evidence to suggest that Attorney General Gregoire’s name was advertised as an endorser after September 25, 2003.

Given that the campaign received confirmation that the endorsement was not given by Attorney General Gregoire on Sunday, September 21<sup>st</sup>, it appears the campaign took four days, until September 25, 2003, to correct its political advertising. There is no evidence that the Godden Campaign acted with “actual malice” by initially including her name, given that Ms. Gregoire describes the matter as a *“good faith misunderstanding.”*

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While it would have been more in keeping with the intent and language of RCW 42.17.530(1)(c) for the campaign to have modified its website prior to September 25, 2003, its failure to do so is at least in part mitigated by the fact that correction was made weeks in advance of the general election.

Although it is unfortunate that some of the uncorrected flyers with Ms. Gregoire's name were inadvertently distributed on September 23, 2003 at the 43<sup>rd</sup> District Democrats' endorsement meeting, there is no evidence of actual malice nor a pattern of distributing her name as an endorser on printed political advertising once the Godden Campaign learned of its mistake.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Chair of the Public Disclosure Commission, I am dismissing your complaint against the Jean Godden campaign.

Sincerely,

Vicki Rippie  
Executive Director

c: Jean Godden, Seattle City Council Member